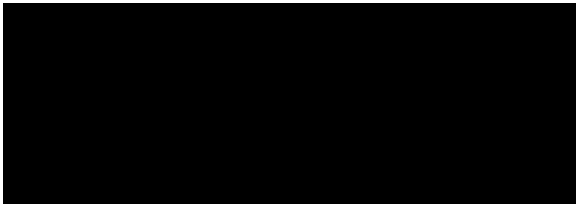


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



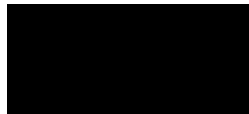
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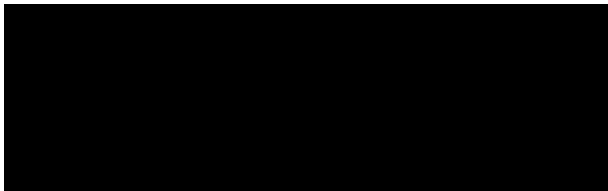
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IN RE: Petitioner:
Beneficiary:



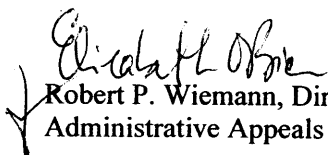
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the People's Republic of China (PRC) who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner had failed to establish that she had been battered by, or had been the subject of extreme cruelty perpetrated by her United States citizen during the marriage.

On appeal, counsel for the petitioner submits a brief and argues that the acts perpetrated against the self-petitioner by her U.S. citizen spouse constitute extreme cruelty under the totality of the circumstances and that the mental and psychological abuse inflicted upon the self-petitioner throughout her marriage are so aggravated as to constitute extreme cruelty.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

* * *

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

According to the evidence on the record, the petitioner entered the United States as a B-1 nonimmigrant visitor on November 3, 1995 and received an authorization to extend her stay until May 30, 1996. The petitioner was previously married and divorced in the PRC. She had one child born of her first marriage on May 31, 1980 in the PRC. The petitioner subsequently received approval to change her status to that of an F-1 academic student on April 14, 1997. The petitioner married a naturalized U.S. citizen, [REDACTED] (aka [REDACTED]) on April 15, 1998 in Flushing, New York. Mr. [REDACTED] filed a Form I-130 Petition on the petitioner’s behalf on May 12, 1998. The petitioner filed a Form I-751, requesting a wavier of the joint filing petition requirement based on extreme mental cruelty. The director denied the Form I-751 because she was ineligible to file as her Form I-130 petition was still pending. On June 13, 2002, the district director denied the I-130 petition because the petitioner’s spouse failed to appear for a scheduled interview. On February 19, 2003, the director denied the petitioner’s I-485 application because her underlying I-130 petition had been denied.

The petitioner filed the Form I-360 petition June 15, 2002. The director determined that there was insufficient evidence to approve the petition, so he issued a request for additional evidence on November 20, 2002. The petitioner replied to the request for additional evidence. After considering the evidence submitted with the petition and in reply to the request for additional evidence, the director determined that the evidence was insufficient to establish the petitioner’s qualification for the visa petition sought. Specifically, the director determined that the petitioner had failed to establish that she had been battered by, or had been the subject of

extreme cruelty perpetrated by, her U.S. citizen spouse.

The evidence on the record includes the following:

- The petitioner's affidavit that states that she and her U.S. citizen husband purchased a restaurant together shortly after they married in 1998 but that her husband took money from the business for his own needs. She said that her husband was unfaithful to her and that they fought almost daily. She said that her husband sometimes unplugged the phone and in one instance, overturned a table, threw a glass at the petitioner and cut her hand. She said that he depleted their bank account without her knowledge.
- Affidavits from the petitioner's friends stating that the petitioner was "badly hurt in spirit" when her husband left her.
- An outpatient psychiatric evaluation of the petitioner that provides that the petitioner reported that she and her husband had arguments over finances and their business. She reported that the arguments became more violent with her husband frequently throwing objects. She reported that during one argument, a glass table broke causing her to sustain cuts on her hands in September 1998. She reported that her husband left her, leaving her with the bills from their business. The physician diagnosed the petitioner with "major depressive disorder" and noted "marital discord."
- An affidavit of the petitioner's son stating that he had been separated from his mother for many years and that when her marriage to the U.S. citizen ended, she was "badly hurt spiritually."

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The director determined that the petitioner's marital discord was due to the restaurant business, rather than domestic violence. While the AAO concurs with the director's determination that the evidence is insufficient to establish that the petitioner suffered battering by or was subject to extreme cruelty by her citizen spouse, the portion of the director's decision attributing the marital discord to business shall be withdrawn. Whether the marital discord arose out of personal versus financial matters is not material. The issue is whether the petitioner established that she was battered by or the subject of the citizen spouse's extreme cruelty during the marriage.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, counselors, or social workers. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her husband or take other legal steps to end the abuse. The petitioner's affidavit is insufficiently specific as to the exact harm she suffered from her citizen spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.